

## Louisiana Law Review

---

Volume 2 | Number 1

November 1939

---

THE FORMATIVE ERA OF AMERICAN LAW,  
by Roscoe Pound. Little, Brown & Co., Boston,  
1938. Pp. x, 188. \$2.00.

Henry T. Lummus

---

### Repository Citation

Henry T. Lummus, *THE FORMATIVE ERA OF AMERICAN LAW*, by Roscoe Pound. Little, Brown & Co., Boston, 1938. Pp. x, 188. \$2.00., 2 La. L. Rev. (1939)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol2/iss1/30>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

complex problems which continually present themselves to the oil and gas industry. It is a worthy addition to Dr. Daggett's many valuable contributions to the development of Louisiana law.

J. MORT WALKER, JR.\*

---

THE FORMATIVE ERA OF AMERICAN LAW, by Roscoe Pound. Little, Brown & Co., Boston, 1938. Pp. x, 188. \$2.00.

In October, 1936, Roscoe Pound visited Tulane University at New Orleans to speak about Edward Livingston on the hundredth anniversary of his death. The present writer was there to speak about Roscoe Pound. This volume contains what Pound there said. He said little about Livingston. In that respect the book reminds one of the brochure that Elbert Hubbard once wrote about the late Lydia E. Pinkham for the Lydia E. Pinkham Medicine Company of my native town. He discussed all the famous women of the Victorian period in America, but all he said about Mrs. Pinkham was that among those women was Lydia E. Pinkham.

But Livingston's fame is secure, and he needs no new biographer. The author has given us a book far more valuable than a life of Livingston could have been. The influences that bore upon legislation, upon judicial decision and upon doctrinal writing during the first half of the last century are discussed with learning and acumen. The notes and citations in support of the views expressed are full and convincing.

One finishes the book with a renewed admiration for Marshall, Gibson, Shaw, Ruffin and other great jurists of the early days of the republic. What a libel upon them is the doctrine professed by our so-called "realists" or "economic determinists," that all those great and good men were simply the willing tools of the wealthy, without thought of right or justice or the general welfare! What a strange remedy the "realists" propose for the alleged tyranny of one class,—the substitution for it of the tyranny of another! What a travesty is their attempt to disguise their medieval barbarities as liberal, progressive and forward looking! Happily, perhaps, the recent embrace of the Bolsheviks and Nazis in Europe has removed the last pretence that there

---

\* Associate Professor of Law, Loyola University (New Orleans).

is any decency or principle in either group, and has left the American advocates of totalitarian tyranny out on a limb.

With such rubbish Pound has no sympathy. He says: "A psychological realism is abroad which regards reason as affording no more than a cover of illusion for processes judicial and administrative which are fundamentally and necessarily irrational."<sup>1</sup> He points out the impossibility of reconciling the decision in *Commonwealth v. Hunt*,<sup>2</sup> which held lawful a strike for a closed shop, with the theory that Shaw and his associates were simply the mouthpieces of the Federalist-Whig commercial aristocracy from which they came and with which they associated. It is difficult today to realize what a radical and unpopular decision that was in the public opinion of 1842. The "realist" explanation that Shaw was playing the demagogue is beneath contempt. As Pound says: "It seems to be impossible for a Marxian economic determinist to comprehend an honest man."<sup>3</sup>

The book closes with a tribute to those great doctrinal writers like Kent and Story, and to Pothier and other civil law jurists from whom they derived much of their inspiration. The author points out that the need for such writings is as great now as it was then, but for a different reason. Then the courts had to decide new questions without adequate materials; now a vast and chaotic mass of materials requires painstaking search after principles for which the courts have little time. Fortunately Wigmore, Williston, Beale and others—to say nothing of the authors of the American Law Institute Restatement—are the full equals of the great writers of the era of which our author writes.

HENRY T. LUMMUS\*

---

VALIDITY OF FOREIGN DIVORCES, by Hamilton Vreeland, Jr. Callaghan and Co., Chicago, 1938. Pp. liv, 355. \$6.00.

Professor Vreeland's monograph on the "Validity of Foreign Divorces" consists of a comprehensive study of the Continental and Anglo-American legal reactions to the matter of the recognition which is to be given at the forum to a divorce decree obtained in another state or country. The book is divided into six parts, the first three of which are devoted successively to the

---

1. P. 27.

2. 45 Mass. 111 (1842).

3. P. 88.

\* Associate Justice, Supreme Judicial Court of Massachusetts, Boston, Mass.